

## **2.1 Overview**

### **2.1.1 Introduction**

Various drainage laws and rules applicable to highway facilities are discussed in this chapter. In any given project, designers may be required to defend their work in court. This chapter should not in any way be treated as a manual upon which to base legal advice or make legal decisions. It is also not a summary of all existing drainage laws, and most emphatically, **this chapter is not intended as a substitute for legal counsel.** The intention is only to provide information and guidance on the engineer's role in the legal aspects of highway drainage. If a designer has any concern as to the legal aspects or requirements of a particular item or situation, it is their responsibility to seek proper guidance prior to proceeding.

The following generalizations can be made in reaching the proper conclusion regarding liability.

- A goal in highway drainage design should be to perpetuate natural drainage, insofar as practicable.
- Even where some alteration in flow is legally permissible, the courts look with disfavor upon infliction of injury or damage that could reasonably have been avoided by a prudent designer.
- The laws relating to the liability of government entities are undergoing radical change, with a trend toward increased government liability.

### **2.1.2 Order Of Authority**

The descending order of law supremacy is Federal, State, and local. Except as provided for in the statutes or constitution of the higher level of government, the superior level is not bound by laws, rules, or regulations of a lower level. State permit requirements are an example of law supremacy. Federal agencies do not secure permits issued by State agencies, except as required by Federal law. Many laws of one level of government are passed for the purpose of enabling that level to comply with or implement provisions of laws of the next higher level. In some instances, a lower level of government may promulgate a law, rule or regulation which would require an unreasonable or even illegal action by a higher level. An example is a local ordinance which would require an expenditure of State funds for a purpose not intended in the appropriation. Many such conflicts in the laws of different levels of government involve constitutional interpretation and must be determined case by case. Such conflicts should be referred to the Attorney General's Office for legal counsel before any action is taken.

### **2.1.3 Related Publications**

There are numerous publications on the legal aspects of drainage and water laws. For additional information on the legal aspects of highway drainage the reader is referred to the following publications, among others:

*Highway Drainage Guidelines*, American Association of State Highway and Transportation Officials, Washington, D. C., 1999. Chapter V - The Legal Aspects of Highway Drainage.

*Legal Research Digest*, Transportation Research Board.

Water Resources Coordination and Permit Manual, Office of Environmental Planning, Bureau of Policy and Planning, ConnDOT, April 1997.

Model Drainage Manual, AASHTO, 1999 Metric Edition.